

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

2005 DEC -5 PM 1:08

LORETTA G. WHYTE
DOCKET NO. 1657

JUDICIAL PANEL
MULTIDISTRICT LIT

DEC - 2 2005

FILED
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BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE VIOXX PRODUCTS LIABILITY LITIGATION

BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, D. LOWELL JENSEN, J. FREDERICK MOTZ,* ROBERT L. MILLER, JR., KATHRYN H. VRATIL AND DAVID R. HANSEN, JUDGES OF THE PANEL

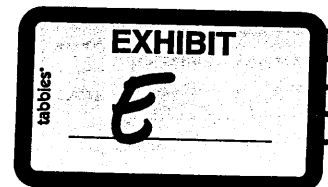
TRANSFER ORDER

Presently before the Panel are motions, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by a health care defendant in the Southern District of Texas action and plaintiffs in the remaining actions listed on Schedule A to vacate the Panel's orders conditionally transferring the actions to the Eastern District of Louisiana for inclusion in the Section 1407 proceedings occurring there in this docket. Merck & Co., Inc., favors inclusion of these actions in MDL-1657 proceedings.

On the basis of the papers filed and hearing session held, the Panel finds that these actions involve common questions of fact with actions in this litigation previously transferred to the Eastern District of Louisiana. Transfer of the actions to that district for inclusion in the coordinated or consolidated pretrial proceedings occurring there will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Any pending motions to remand to state court can be presented to and decided by the transferee judge. *See, e.g., In re Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001). The Panel further finds that transfer of these actions is appropriate for the reasons expressed in the original order directing centralization in this docket. In that order, the Panel held that the Eastern District of Louisiana was a proper Section 1407 forum for actions involving claims of liability for allegedly adverse effects arising from the ingestion of Vioxx. *See In re Vioxx Products Liability Litigation*, 360 F.Supp.2d 1352 (J.P.M.L. 2005).

The opposing Tennessee plaintiff and the Texas health care defendant argue that the presence of individual and/or local questions of fact as well as differing legal theories should militate against inclusion of these actions in MDL-1657 proceedings. We are unpersuaded by these arguments. Inclusion of these actions in Section 1407 proceedings has the salutary effect of placing all the related actions before a single judge who can formulate a pretrial program that: 1) prevents repetition of previously considered matters; 2) allows pretrial proceedings with respect to any non-common issues to proceed concurrently with pretrial proceedings on common issues, *In re Multi-Piece Rim Products*

* Judge Motz took no part in the decision of this matter.



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Liability Litigation, 464 F.Supp. 969, 974 (J.P.M.L. 1979); and 3) ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties. See *In re StarLink Corn Products Liability Litigation*, 152 F.Supp.2d 1378 (J.P.M.L. 2001). It may be, on further refinement of the issues and close scrutiny by the transferee judge, that some claims or actions can be remanded to their transferor districts for trial in advance of the other actions in the transferee district. Should the transferee judge deem remand of any claims or actions appropriate, procedures are available whereby this may be accomplished with a minimum of delay. See Rule 7.6, R.P.J.P.M.L., 199 F.R.D. at 436-38.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these actions are transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Eldon E. Fallon for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

FOR THE PANEL:



Wm. Terrell Hodges
Chairman

SCHEDULE A

MDL-1657 -- In re Vioxx Products Liability LitigationEDLA
Sect. L/3Southern District of Alabama*Marquerite Woods v. Merck & Co., Inc., et al.*, C.A. No. 2:05-425 05-6339Middle District of Florida*Barbara Fowler-Browning, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:05-586 05-6340Northern District of Illinois*James Zafiratos v. Merck & Co., Inc., et al.*, C.A. No. 1:05-3784 05-6341Southern District of Illinois*Stanley Hayes v. Merck & Co., Inc., et al.*, C.A. No. 3:05-450 05-6342*Clara Kirkendall v. Merck & Co., Inc., et al.*, C.A. No. 3:05-562 05-6343*Mary Hardin v. Merck & Co., Inc., et al.*, C.A. No. 3:05-563 05-6344Western District of Kentucky*Lois Hammond, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:05-351 05-6345Eastern District of Missouri*Harriet Aldridge, et al. v. Merck & Co., Inc., et al.*, C.A. No. 4:05-847 05-6346*Mona Swint, et al. v. Merck & Co., Inc., et al.*, C.A. No. 4:05-879 05-6347*Sam Fife, et al. v. Merck & Co., Inc., et al.*, C.A. No. 4:05-880 05-6348*Vanita Copeland, et al. v. Merck & Co., Inc., et al.*, C.A. No. 4:05-881 05-6349District of Nevada*Duane Allen Carlson, et al. v. Merck & Co., Inc., et al.*, C.A. No. 2:05-599 05-6350*Nina Baker, et al. v. Merck & Co., Inc., et al.*, C.A. No. 2:05-625 05-6351*Daniel Morrison, et al. v. Merck & Co., Inc., et al.*, C.A. No. 2:05-627 05-6352*Sharon Himmel, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:05-334 05-6353*Sean Regan, et al. v. Merck & Co., Inc., et al.*, C.A. No. 3:05-336 05-6354Western District of New York*Lynn Krieger v. Merck & Co., Inc., et al.*, C.A. No. 6:05-6338 05-6355District of Oregon*Wayne S. Harger v. Merck & Co., Inc., et al.*, C.A. No. 6:05-6184 05-6356

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Eastern District of Tennessee

EDLA
Sect. L/3

Louise Denton v. Merck & Co., Inc., C.A. No. 2:05-170

05-6357

Southern District of Texas

Jackie Roberts, etc. v. Juan Marcos Garcia, M.D., et al., C.A. No. 1:05-210

05-6358

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JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

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United States District Court
Southern District of New York

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United States District Court
Northern District of California

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United States District Court
District of Maryland

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December 2, 2005

Loretta G. Whyte, Clerk
U.S. District Court
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Re: MDL-1657 -- In re Vioxx Products Liability Litigation

(See Attached Schedule A of Order)

Dear Ms. Whyte:

I am enclosing a certified copy and one additional copy of a transfer order filed today by the Panel in the above-captioned matter. The order is directed to you for filing.

The Panel's governing statute, 28 U.S.C. §1407, requires that the transferee clerk "...transmit a certified copy of the Panel's order to transfer to the clerk of the district court from which the action is being transferred."

The Panel has ordered that its Rule 1.6(a), pertaining to transfer of files, be suspended for purposes of this litigation. Accordingly, the transferee district clerk shall request, and the transferor district clerk shall forward, only those files deemed necessary by the transferee district court.

A list of involved counsel is attached.

Very truly,

Michael J. Beck
Clerk of the Panel

By 
Deputy Clerk

Enclosures/Attachment

cc: Transferee Judge: Judge Eldon E. Fallon
Transferor Judges: (See Attached List of Judges)
Transferor Clerks: (See Attached List of Clerks)

JPML Form 29A